

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re: *David Johlke*

Case Number: 19-31323
Chapter: 13

Debtor(s).

Objection to Motion Due

1/4/2021

Hearing on Timely-
Filed Objections:
To be determined

**NOTICE OF MOTION TO DETERMINE COMPLIANCE WITH 11 USC 1322(b)(5) – NOTICE OF
MORTGAGE PAYMENT CHANGE FILED 12/11/10**

To the parties in interest:

The debtor(s) in the above-captioned case (the “debtor”) has filed a MOTION TO COMPLIANCE WITH 11 USC 1322(B)(5)- NOTICE OF MORTGAGE PAYMENT CHANGED FILED 12/11/10. A copy of that motion accompanies this notice.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the motion, or if you want the Court to consider your views on the motion, then **on or before the objection due date stated above**, you or your attorney must file an objection with:

Clerk, United States Bankruptcy Court
517 East Wisconsin Avenue
Milwaukee, WI 53202-4581

and provide copies to:

Michael E. Holsen – Esserlaw, LLC
11805 W. Hampton Avenue
Milwaukee, WI 53225

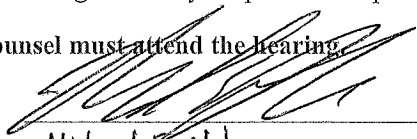
in time for its receipt by the above deadline. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

The Court will hold a hearing on any timely-filed objection. The Court may hold a hearing in the absence of an objection if it is not satisfied that the Debtor has provided an adequate evidentiary basis for ruling in its favor. If there is no timely objection and the Court finds an adequate evidentiary basis, the Court may adjudicate the motion based on the debtor’s submissions.

If necessary, the hearing will take place before Judge Katherine M. Perhach, United States Bankruptcy Chief Judge, in the United States Courthouse at **517 East Wisconsin Avenue, Milwaukee, Wisconsin, in Room 167, or may be heard by Telephone under precautions due to COVID-19** at a date and time to be determined by the Court. The Court will also indicate at the time of any hearing whether such hearing will be by telephone or in person.

The debtor’s counsel, and the objecting party or their counsel must attend the hearing.

Date: **12/17/2020**


Michael E. Holsen
Attorney for the Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

IN RE:

David Johlke,

Chapter 13 Proceedings
Case No. 19-31323-KMP

Debtor.

MOTION TO DETERMINE COMPLIANCE WITH 11 USC 1322(b)(5) – NOTICE OF
MORTGAGE PAYMENT CHANGE FILED 12/11/20

NOW COMES the above-named Debtor by his attorneys, Esserlaw LLC, by Attorney Michael E. Holsen, and respectfully requests that the Court determine whether the Notice of Mortgage Payment Change 410S1 filed by US Bank Trust National Association as Trustee of the Cabana Series IV Trust (“the Creditor”) (Filed 12/11/20) is required to maintain payments in accordance with 1322(b)(5) of the Code. In support of the Debtor’s motion, the Debtor states:

1. The Creditor filed a notice indicating that as of 1/1/21, the Debtor’s escrow payment would increase from \$294.40 to \$690.53 monthly, increasing payment to \$1,233.29.
2. The Debtor believes this change is due to clear errors in accounting by BSI Financial Services, the servicer for the Creditor.
3. Attached to the Creditor’s notice is an Annual Escrow Account Disclosure Statement, which estimates 2021 escrow payments for City taxes as \$6,579.62, based on anticipated disbursements of \$3,289.81 to the City in January 2021, and another \$3,289.81 to the City in July 2021.

Esserlaw, LLC
11805 West Hampton Avenue
Milwaukee, WI 53225
Telephone (414) 461-7000
Facsimile (414) 461-8860

4. The Debtor's tax bills for the years 2015, 2016, 2017, and 2018 were \$2,459.41, \$2,394.32, \$2,721.45, and \$3,006.80, respectively. While the Debtor acknowledges an increase in assessed value of his Property, and that special charges up to \$737.29 existed on prior tax bills, there does not appear to be a basis for believing that the Debtor's property taxes for the current year will be \$6,579.62.
5. The Debtor received an escrow adjustment in December 2019 which listed the taxes of \$3,006.80, then divided that amount into two installments, of \$1,503.40 each. Accordingly, it appears to the Debtor that one of two things may have occurred in December 2020:
 - a. Creditor has received a tax bill or notice indicating a current amount due of \$6,579.62, which it is dividing into two installments of \$3,289.81 each, or
 - b. Creditor has received a tax bill indicating a current amount due of \$3,289.81, and included that full payment twice, rather than dividing the installment amount by 2.
6. The Debtor is already accounting for "Escrow Advances" of \$7,443.90 from August 27, 2019 in his Plan, as well as a "Projected Escrow Shortage" of \$1,803.43 in his Plan. If the Creditor paid post-petition amounts for taxes for a prior year, and did not have sufficient funds to pay those, that amount should have been included in its Motion for Relief From Stay filed 7/28/20, or was otherwise accounted for by the Projected Escrow Shortage already being repaid by the Debtor. In its Motion for Relief, the Creditor alleged only that 2 payments were past due. The Debtor and

Creditor settled the Motion with a doomsday and with the Debtor curing the accrued arrears through a supplemental claim to his Plan.

7. The Notice of Payment Change also indicates that, although the Creditor has included its Escrow Balance in its Proof of Claim, it is continuing to use that Escrow Balance to determine the Debtor's future payments (page 4 of 5 of the Notice of Payment Change shows an "Actual" escrow balance of "\$7,443.90"). This constitutes an inappropriate collection on a stayed debt, because the Creditor may be creating a "shortage" due and demanding it via monthly payments despite collection on that debt being stayed by the Bankruptcy (and repaid through the Debtor's Plan).
8. The Creditor should be required to present evidence that its assertion that \$6,579.62 will come due for taxes in the current year is reasonable, given that during the prior 5 years, the Debtor's taxes for the Property have been about ½ of that, or should be required to withdraw or amend its Notice of Payment Change to reflect a lower amount due, if it appears that taxes will NOT be \$6,579.62 for the year.
9. Debtor acknowledges that the Lender possesses a right under the Note and Mortgage to collect and hold funds in an amount sufficient to permit it to pay these costs as they come due under Paragraph 3 of the mortgage, but disputes that the estimate is "reasonable" as required therein, unless the Creditor can provide further support for its assertion of \$6,579.62 coming due for the year. Accordingly, the Debtor should not be required to make future payments to the extent that those payments are based on *unreasonable* estimates of escrow disbursements.

10. The Debtor attempted to confirm a current amount due for taxes via the Milwaukee MUNIS Self-Service, but that system is presently down due to being updated for new tax information. Debtor anticipates that, by the time of any hearing on this Motion, publicly available information related to the current tax bill due may be available -- which may either support withdrawing the Motion or may support the Debtor's argument further.

11. If the actual charges for taxes will be \$3,289.81, the amount of the escrow increase is overstated by at least \$274.15, and that increase is further overstated due to the Creditor's use of amounts the Debtor is paying through his Plan in determining the amount of a "shortage" being collected via monthly payments (the "shortage" is \$81.57 monthly in the Notice). Correcting for both of those adjustments, if the Debtor is correct, would result in a future escrow of about \$334.81 (up from \$294.40) -- an increase, but, in the Debtor's opinion, a more justified and reasonable one.

WHEREFORE, the Debtor prays for an order determining that payments of \$1,233.29 are not required in order to maintain compliance with 11 USC 1322(b)(5), require that the Creditor demonstrate the reasonability of its estimated disbursements of \$6,579.62, and/or determine the amount of payment required in order for the Debtor to maintain compliance with 11 USC 1322(b)(5), and grant such other and further relief as the Court determines is necessary and just.

Dated this 16th day of December, 2020

Esserlaw, LLC

Attorneys for Debtor

By 

Michael E. Holsen

Esserlaw, LLC
11805 West Hampton Avenue
Milwaukee, WI 53225
Telephone (414) 461-7000
Facsimile (414) 461-8860

Fill in this information to identify the case:

Debtor 1 David E Johlke

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Eastern District of Wisconsin

Case number 19-31323-kmp

Official Form 410S1

Notice of Mortgage Payment Change

12/15

If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

US BANK TRUST NATIONAL ASSOCIATION AS
Name of creditor: TRUSTEE OF THE CABANA SERIES IV TRUST

Court claim no. (if known): 7

Last 4 digits of any number you use to
identify the debtor's account:

9 5 7 0

Date of payment change:

Must be at least 21 days after date
of this notice 01/01/2021

New total payment:

Principal, interest, and escrow, if any \$ 1,233.29

Part 1: Escrow Account Payment Adjustment

1. Will there be a change in the debtor's escrow account payment?

☐ No

☒ Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: Change in escrow.

Current escrow payment: \$ 294.40

New escrow payment: \$ 690.53

Part 2: Mortgage Payment Adjustment

2. Will the debtor's principal and interest payment change based on an adjustment to the interest rate on the debtor's variable-rate account?

☒ No

☐ Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

Current interest rate: _____%

New interest rate: _____%

Current principal and interest payment: \$ _____

New principal and interest payment: \$ _____

Part 3: Other Payment Change

3. Will there be a change in the debtor's mortgage payment for a reason not listed above?

☒ No

☐ Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement.
(Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____

New mortgage payment: \$ _____

Debtor 1

David E Johlke

First Name

Middle Name

Last Name

Case number (if known) 19-31323-kmp

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box.

☐ I am the creditor.

☒ I am the creditor's authorized agent.

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

X/s/ Michelle R. Ghidotti-Gonsalves

Signature

Date 12/11/2020

Print: Michelle R. Ghidotti-Gonsalves

First Name

Middle Name

Last Name

Title Authorized Agent for Secured Creditor

Company Ghidotti Berger, LLP

Address 1920 Old Tustin Ave.

Number

Street

Santa Ana

CA

92705

City

State

ZIP Code

Contact phone 949-427-2010

Email bknotifications@ghidottiberger.com



314 S. Franklin Street, 2nd Floor
P.O. Box 517
Titusville, PA 16354
1-800-327-7861
https://myloanweb.com/BSI

Annual Escrow Account Disclosure Statement

ACCOUNT NUMBER: [REDACTED]

004

DATE: 11/23/20

DAVID E JOHLKE
7920 W TOWNSEND STREET
MILWAUKEE, WI 53404

PROPERTY ADDRESS
7920 WEST TOWNSEND ST
MILWAUKEE, WI 53222

PLEASE REVIEW THIS STATEMENT CLOSELY - YOUR MORTGAGE PAYMENT MAY BE AFFECTED. THIS STATEMENT TELLS YOU OF ANY CHANGES IN YOUR MORTGAGE PAYMENT, ANY SURPLUS REFUNDS, OR ANY SHORTAGE YOU MUST PAY. IT ALSO SHOWS YOU THE ANTICIPATED ESCROW ACTIVITY FOR YOUR ESCROW CYCLE BEGINNING 01/01/2021 THROUGH 12/31/2021.

----- ANTICIPATED PAYMENTS FROM ESCROW 01/01/2021 TO 12/31/2021 -----

HOMEBOWNERS INS	\$728.00
CITY	\$6,579.62
TOTAL PAYMENTS FROM ESCROW	\$7,307.62
MONTHLY PAYMENT TO ESCROW	\$608.96

----- ANTICIPATED ESCROW ACTIVITY 01/01/2021 TO 12/31/2021 -----

ANTICIPATED PAYMENTS			ESCROW BALANCE COMPARISON		
MONTH	TO ESCROW	FROM ESCROW	DESCRIPTION	ANTICIPATED	REQUIRED
			STARTING BALANCE -->	\$2,919.85	\$3,898.77
JAN	\$608.96	\$3,289.81	CITY L1->	\$239.00	L2-> \$1,217.92
FEB	\$608.96			\$847.96	\$1,826.88
MAR	\$608.96			\$1,456.92	\$2,435.84
APR	\$608.96			\$2,065.88	\$3,044.80
MAY	\$608.96			\$2,674.84	\$3,653.76
JUN	\$608.96			\$3,283.80	\$4,262.72
JUL	\$608.96	\$3,289.81	CITY	\$602.95	\$1,581.87
AUG	\$608.96			\$1,211.91	\$2,190.83
SEP	\$608.96			\$1,820.87	\$2,799.79
OCT	\$608.96			\$2,429.83	\$3,408.75
NOV	\$608.96			\$3,038.79	\$4,017.71
DEC	\$608.96	\$728.00	HOMEBOWNERS INS	\$2,919.75	\$3,898.67

----- DETERMINING THE SUFFICIENCY OF YOUR ESCROW BALANCE -----
IF THE ANTICIPATED LOW POINT BALANCE (L1) IS LESS THAN THE REQUIRED BALANCE (L2), THEN YOU HAVE AN ESCROW SHORTAGE. YOUR ESCROW SHORTAGE IS \$978.92.

CALCULATION OF YOUR NEW PAYMENT

PRIN & INTEREST	\$542.76
ESCROW PAYMENT	\$608.96
SHORTAGE PYMT	\$81.57
NEW PAYMENT EFFECTIVE 01/01/2021	\$1,233.29

YOUR ESCROW CUSHION FOR THIS CYCLE IS \$1,217.92.

***** Continued on reverse side *****



Loan Number: [REDACTED]
Statement Date: 11/23/20
Escrow Shortage: \$978.92

Important: Please return this coupon with your check.

BSI FINANCIAL SERVICES
314 S. Franklin Street, 2nd Floor
P.O. Box 517
Titusville, PA 16354

Escrow Payment Options

I understand that my taxes and/or Insurance has increased and that my escrow account is short \$978.92. I have enclosed a check for:

- ☐ Option 1: \$978.92, the total shortage amount. I understand that if this is received by 01/01/2021 my monthly mortgage payment will be \$1,151.72 starting 01/01/2021.
- ☐ Option 2: \$_____, part of the shortage. I understand that the rest of the shortage will be divided evenly and added to my mortgage payment each month.
- ☐ Option 3: You do not need to do anything if you want to have all of your shortage divided evenly among the next 12 months.

Please make your check payable to: BSI FINANCIAL SERVICES and please include your loan number on your check.

***** Continued from front *****

ACCOUNT HISTORY

THIS HISTORY STATEMENT COMPARES YOUR PRIOR ANALYSIS CYCLE PROJECTED ESCROW ACTIVITY TO THE ACTUAL ESCROW ACTIVITY BEGINNING 01/01/2020 AND ENDING 12/31/2020. IF YOUR LOAN WAS PAID-OFF, ASSUMED OR TRANSFERRED DURING THIS PRIOR CYCLE, OR THE COMPUTATION YEAR IS BEGING CHANGED, ACTUAL ACTIVITY STOPS AT THAT POINT. THIS STATEMENT IS INFORMATION ONLY AND REQUIRES NO ACTION ON YOUR PART.

YOUR PAYMENT BREAKDOWN AS OF 01/01/2020 IS:

PRIN & INTEREST	\$542.76
ESCROW PAYMENT	\$294.40
BORROWER PAYMENT	\$837.16

MONTH	PAYMENTS TO ESCROW		PAYMENTS FROM ESCROW		DESCRIPTION	ESCROW BALANCE	
	PRIOR PROJECTED	ACTUAL	PRIOR PROJECTED	ACTUAL		PRIOR PROJECTED	ACTUAL
					STARTING BALANCE	\$1,797.80	\$7,443.90-
JAN	\$294.40	\$0.00 *	\$1,503.40		CITY	T-> \$588.80	A-> \$7,443.90-
FEB	\$294.40	\$237.44 *				\$883.20	\$7,206.46-
MAR	\$294.40	\$237.44 *				\$1,177.60	\$6,969.02-
APR	\$294.40	\$237.44 *				\$1,472.00	\$6,731.58-
MAY	\$294.40	\$237.44 *				\$1,766.40	\$6,494.14-
JUN	\$294.40	\$0.00 *				\$2,060.80	\$6,494.14-
JUL	\$294.40	\$237.44 *	\$1,503.40		CITY	\$851.80	\$6,256.70-
AUG	\$294.40	\$474.88 *				\$1,146.20	\$5,781.82-
SEP	\$294.40	\$3,527.25 *		\$3,289.81 *	CITY	\$1,440.60	\$5,544.38-
OCT	\$294.40	\$237.44 *				\$1,735.00	\$5,306.94-
NOV	\$294.40	\$237.44 *				\$2,029.40	\$5,069.50-
DEC	\$294.40	\$0.00	\$526.00		HOMEOWNERS INS	\$1,797.80	\$5,069.50-
	\$3,532.80	\$5,664.21	\$3,532.80	\$3,289.81			

UNDER FEDERAL LAW, WHEN YOUR ACTUAL ESCROW BALANCE REACHED THE LOWEST POINT, THAT BALANCE WAS TARGETED NOT TO EXCEED 1/6TH OF THE ANNUAL PROJECTED DISBURSEMENTS. YOUR LOAN DOCUMENTS OR STATE LAW MAY SPECIFY THAT YOUR LOWEST BALANCE MUST BE A LOWER AMOUNT THAN THE FEDERAL LAW ALLOWS.

UNDER YOUR MORTGAGE CONTRACT OR STATE OR FEDERAL LAW, YOUR TARGETED LOW POINT BALANCE (T) WAS \$588.80. YOUR ACTUAL LOW POINT ESCROW BALANCE (A) WAS \$7,443.90-.

BY COMPARING THE ANTICIPATED ESCROW TRANSACTIONS WITH THE ACTUAL TRANSACTIONS YOU CAN DETERMINE WHERE A DIFFERENCE MAY HAVE OCCURRED. AN ASTERISK (*) INDICATES A DIFFERENCE IN EITHER THE AMOUNT OR DATE OF THE PROJECTED ACTIVITY THAT HAS NOT YET OCCURRED DUE TO THE DATE OF THIS STATEMENT.

IF THERE ARE NO PRIOR PAYMENTS TO OR FROM ESCROW SHOWN, THERE WAS NO PRIOR PROJECTION TO WHICH THE ACTUAL ACTIVITY COULD BE COMPARED.

Determining your Shortage or Surplus

Shortage:

Any shortage in your escrow account is usually caused by one the following items:

- An increase, if any, in what was paid for insurance and/or taxes from your escrow account.
- A projected increase in taxes for the upcoming year.
- The number of months elapsed from the time of these disbursements to the new payment effective date.

Shortages are divided evenly of the next twelve months. To reduce the increase in your monthly payment, the shortage can be paid either partially or in full.

Surplus:

A surplus in your escrow account is usually caused by one the following items:

- The insurance/taxes paid during the past year were lower than projected.
- A refund was received from the taxing authority or insurance carrier.
- Additional funds were applied to your escrow account.

If your surplus is \$50.00 or greater and your loan was contractually current at the time when the analysis was run or calculated, a check will be sent to you. If your surplus is less than \$50.00, the funds will be retained in your escrow account.

CERTIFICATE OF SERVICE

On December 11, 2020, I served the foregoing documents described as Notice of Mortgage Payment Change on the following individuals by electronic means through the Court's ECF program:

COUNSEL FOR DEBTOR(S)

Michael Edward Holsen

meh@esserlaw.com

TRUSTEE

Scott Lieske

ecf@chapter13milwaukee.com

US TRUSTEE

US Trustee

ustpregion11.mi.ecf@usdoj.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Brandy Carroll

Brandy Carroll

On December 11, 2020, I served the foregoing documents described as Notice of Mortgage Payment Change on the following individuals by depositing true copies thereof in the United States mail at Santa Ana, California enclosed in a sealed envelope, with postage paid, addressed as follows:

Debtor(s) David E Johlke 7920 W. Townsend Street Milwaukee, WI 53222	
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Brandy Carroll

Brandy Carroll